did not know. Albert Teo said that the injunction would not have been violated – thereby saving the contempt proceedings – if Datuk Hong had not taken a different attitude. In addition to these facts Datuk Hong himself admitted in evidence that he could comply with the order of the court, and in his affidavit he was full of remorse and said that he had no intention of committing contempt. Based on these materials we are of the view that Datuk Hong had taken a high-handed attitude and could not be heard to say that he was not served with the injunction in time, and that he never meant to be disobedient to court's order. His instruction to David U was so complete and so demanding that the two subordinates would not dare to question him even though it is contrary to the injunction order. In our view he must take the full responsibility for contempt.

As regards penalty we take note of the fact that the respondents' suit against Red Rose on their right to operate the night club at the premises (Suit No. K419 of 1982) ended in a dismissal. This fact has some bearing on the punishment imposable on the appellants, for if the suit had resulted in a victory for the respondents, the appellants' contempt would have been more aggravated and they would have deserved more severe punishment. Nonetheless, looking at the degree of guilt committed by each of them we are left in no doubt that Datuk Hong should bear a higher responsibility because it is on his instruction that the restaurant premises were locked, thereby causing the closure of the night club also. Further when Albert Teo told him that he was not prepared to carry out the instruction Datuk Hong made David U to do it and when the latter tried to argue, Datuk Hong reminded him of his position in Hotel Berjaya. In view of these circumstances the proper punishment for these two appellants should be the reverse of what the learned judge had imposed. It is Datuk Hong who should be fined $10,000/- or in default five months' imprisonment, and Albert Teo should be fined $6,000/- or in default three months' imprisonment.

We therefore vary these fines accordingly.

Subject to the variation in the fines as indicated above, we dismiss the appeal with costs and order that the deposit be paid to the respondents on account of taxed costs.

Appeal dismissed.

Solicitors: *Joseph Lee & Co.; Shelley Yap & Leong Tseu Chong Chia & Co.*

HOO HUA v. LEE HIN & ORS.

[F.C. (Salleh Abas L.P., Wan Suleiman Ag. C.J. (Malaya) & Hashim Yeop A. Sani F.J.) September 3, 1984]
[Johore Bahru – Federal Court Civil Appeal No. 308 of 1983]

Practice & Procedure – Consent judgment for possession of premises – Application to stay execution of judgment – Premises vacated – Application not granted.

Landlord & Tenant – Rent-controlled premises – Claim for possession – Consent judgment – Application to stay execution of judgment – Premises vacated – Application not granted.

In this case the respondents had obtained a consent judgment for the possession of premises against the appellant. There was some dispute as the effect of the consent order and the appellant applied, *inter alia,* for stay of execution. The appellant had however vacated the premises. The learned trial judge refused a stay and the appellant appealed.

Held, dismissing the appeal: since the appellant had already vacated the premises, an order to stay execution would be completely academic and did not in any way prejudice the appellant in pursuing her writ to set aside the consent judgement.

FEDERAL COURT.

Anthony Christopher Peter for the appellant.
C.C. Aiyathurai for the respondent.

Cur. Adv. Vult.

Salleh Abas L.P. (delivering the Judgment of the Court): The respondents are the owners of certain rent-controlled premises, a certain portion of which was occupied by the appellant as a sub-tenant. The respondents sued the appellant for the recovery of vacant possession of this portion of the premises. The suit ended in a consent judgment agreed and recorded on January 12, 1982 to the effect that the appellant had to give vacant possession of the portion occupied by her. The consent judgment specified no date as to when possession was to be delivered.

But it was the contention of the appellant that possession was to be delivered only upon the respondents obtaining a decontrol certificate from the Rent Control Tribunal. The respondents did not deny this contention and on the contrary seemed to agree with it. What they disputed is that the appellant has since occupied a bigger portion of the premises than she had done previously. Thus subsequently on September 24, 1983 the respondents applied to the Magistrate's Court for leave to issue writ of possession in

order to execute the consent judgment. The appellant responded by filing an action in the same court to set aside the consent judgment on the grounds of fraud, misrepresentation and undue influence. She also applied for the stay of the execution of writ of possession.

On November 2, 1983 the Magistrate allowed the respondents' application for leave to issue writ of possession and at the same time refused the appellant's application for the stay of the writ. As a result the appellant appealed to the High Court against the decision of the learned Magistrate, and in addition she applied by an *ex parte* Originating Motion to the High Court to stay the writ. Mohamed Yusof J. who heard the Originating Motion refused the appellant's application and gave no reason for so doing. It appears that he was unhappy at the absence of counsel for the appellant when the motion came before him. Now the appellant appeals to us against that decision.

From the narration of these facts there are now still two proceedings pending between the parties concerning this portion of the premises; first the appellant's civil action in the Magistrate court to set aside the consent judgment and secondly the appellant's appeal in the High Court against the order of the Magistrate granting leave to issue writ of possession.

Obviously the multiplicity of the proceedings which were started by the appellant concerns a basic issue relating to the nature and scope of the consent judgment. Whilst it is the contention of the appellant that the consent judgment was not absolute but conditional upon the respondents' obtaining a decontrol certificate in respect of the premises, the respondent's contention is that the appellant had breached the consent judgment by occupying a bigger portion than what she had done previously. However, in the present appeal we are not concerned with either of those issues. We are only concerned to see whether the rejection of the appellant's Originating Motion to stay the issue of the writ of possession by Mohamed Yusof J. was a proper exercise of discretion. As to this we are informed by counsel that the appellant has already vacated the premises and rented another premises paying a fairly high rent. Counsel for the respondents informed us that they were prepared to let the appellant occupy the portion formerly occupied by her provided that she does not extend her occupation to other parts not occupied by her previously. Counsel for the appellant disputed this statement.

In view of this information it seems to us that the difference between the parties is whether the appellant was breaking the consent judgment by occupying a space bigger than what she had occupied previously. In our judgment, since the appellant has already vacated the premises, an order to stay execution is completely academic, and does not in any way prejudice the appellant in pursuing her suit to set aside the consent judgment. Should she win, she could always be restored or entitled to damages unless a decontrol certificate is obtained. Counsel for the appellant informed us that he apprehended that a decontrol certificate would be granted now that the appellant is out of the premises. As to this we are not in a position to restrain the Rent Control Tribunal from issuing the certificate in the present proceedings. This matter is completely irrelevant for the purpose of this appeal, although it may have an important bearing in other proceedings or elsewhere.

Hence, we dismissed the appeal with costs and we ordered that the deposit be paid to the respondents as agreed costs.

Appeal dismissed.

Solicitors: *Peter & Co.; C.C. Aiyathurai & Co.*

ABDUL SAMAD BIN HAJI ALIAS & ANOR. v. PUBLIC BANK & ANOR.

[F.C. (Salleh Abas L.P, Wan Suleiman & Hashim Yeop A. Sani F.JJ.) September 3 & October 3, 1984]

[Johor Bahru – Federal Court Civil Appeal No. 100 of 1983]

Practice & Procedure – Winding up – Receivers – Excess amount paid into court – Garnishment Order – Claim by Director-General of Customs – Application to court by receivers – Functus officio – R.H.C. 1980, O. 49 r. 6.

Company Law – Winding-up – Receivers – Garnishment Order – Claim by Director-General of Customs – Application to court by receivers – Functus officio.

In this case the appellants were appointed receivers and managers of a debtor company. A sum of $38.702.66 was paid into the debtor company's account being excess amount after realisation of assets and settlement of costs of realisation and amounts owing to secured creditors. Claims were made by the respondents and a garnishment order was obtained. The money was paid into court on November 23, 1982. Upon being appointed receivers and managers the appellant gave notice of their appointment to